

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Wildwood Springs Development of Regional Impact – Impact Fee Credit Agreement for Proportionate Share Contributions Associated with Phase I of the Wildwood Springs Development of Regional Impact (Staff recommends approval).

REQUESTED ACTION: Approve Agreement

☐ Work Session (Report Only) **DATE OF MEETING:** 3/22/2011
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: Planning _____

BUDGET IMPACT: Maximum Impact \$4,700,532
☐ Annual **FUNDING SOURCE:** Road Impact Fees Collected from DRI
☒ Capital **EXPENDITURE ACCOUNT:** _____
☐ N/A

HISTORY/FACTS/ISSUES:

The Wildwood Springs Development of Regional Impact (DRI) is a proposed large-scale mixed use project within the City of Wildwood. The DRI is located on the south side of C-468 at the connection with US 301.

The Transportation Proportionate Share Agreement for the DRI provides the opportunity for the Developer (Wildwood Springs, LLC) to enter into a transportation impact fee agreement with the County to provide for either credits or reimbursement for the costs of improvement to the US 301 and C-468 intersection. The attached “Impact Fee Credit Agreement for Proportionate Share Contributions Associated with Phase I of the Wildwood Springs Development of Regional Impact” (Agreement) is consistent with the intent of the Transportation Proportionate Share Agreement.

The projected cost for the improvements is \$3,917,110. The proposed Agreement allows the cost to increase up to 120% if the project is competitively bid. Given this potential escalation, the maximum impact fee credit or reimbursement is \$4,700,532.

The Agreement provides for a maximum impact fee credit to not exceed the total value of all transportation impact fees generated by the full build-out of the DRI. Based on current impact fee rates, the anticipated total value of all transportation impact fees generated by the DRI is \$7,753,005. This is shown in the table below:

**Potential Transportation Impact Fee Revenue
Wildwood Springs Development of Regional Impact**

Entitlement			Impact Fee Rate	Impact Fee Revenue
Single Family	2,000	du	\$2,600 per du	\$5,200,000
Multi-Family	1,000	du	\$1,779 per du	\$1,779,000
Retail	215,000	sq ft	\$3,433 per 1,000 sq ft	\$738,095
Office	10,000	sq ft	\$3,591 per 1,000 sq ft	\$35,910
			Total	\$7,753,005

The potential transportation impact fee revenue generation by the DRI (\$7,752,005) exceeds the maximum County obligation (\$4,700,532) under the proposed Agreement.

The Agreement is consistent with the County's transportation impact fee ordinance. In addition, the Agreement was reviewed by the County Attorney with no objection.

Staff recommends approval of the Agreement.

**IMPACT FEE CREDIT AGREEMENT
FOR PROPORTIONATE SHARE CONTRIBUTIONS
ASSOCIATED WITH PHASE 1 OF THE
WILDWOOD SPRINGS DEVELOPMENT OF REGIONAL IMPACT**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2011, by and between **WILDWOOD SPRINGS, LLC**, a Florida limited liability company, doing business at 5850 T.G. Lee Boulevard, Suite 200, Orlando, FL 32822 (hereinafter called "Developer") and **SUMTER COUNTY**, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, FL 34785 (hereinafter called "County").

RECITALS

WHEREAS, the Developer is the developer of the approximately 1,048-acre Wildwood Springs Development of Regional Impact ("DRI") located in the City of Wildwood, Florida (the "City"), as further described by the Development Order for the Wildwood Springs Development of Regional Impact approved by the City on October 30, 2008, whose effective date is pending the City's approval of the Amended and Restated Development Order Wildwood Springs Development of Regional Impact City of Wildwood Florida (collectively, the "Development Order"); and

WHEREAS, pursuant to the Development Order, the Developer, the County, the City and the Florida Department of Transportation ("FDOT") will enter into that certain Transportation Proportionate Share Agreement Wildwood Springs Development of Regional Impact City of Wildwood, Florida, approved by the County on even date herewith ("Proportionate Share Agreement"), relating to the mitigation of impacts to transportation facilities caused by the development of Phase 1 of the DRI; and

WHEREAS, the Proportionate Share Agreement sets forth the timing and extent of contributions to be made by the Developer toward the improvement of affected transportation facilities, including the realignment and signalization of the intersection at State Road 35 (US Highway 301) and County Road 468 and the funding of a regional transit study; and

WHEREAS, the Proportionate Share Agreement also sets forth Developer's entitlement to impact fee credits for such contributions, pursuant to Section 380.06(16), Fla. Stat., and specifically provides that County and Developer shall enter into this Agreement to further set forth the details of such credits; and

WHEREAS, the County finds that Developer is entitled to receive impact fee credits and/or cash reimbursement for such contributions and that such contributions are consistent with the County's Comprehensive Plan, are an integral part of and a reasonably necessary accommodation of contemplated Off-Site Improvements to Designated County Roads and excludes Access Improvements, as those terms are defined in Article III of the County's Land Development Code, and the proposed funding and/or construction time schedule is consistent with the County's transportation work schedule; and

WHEREAS, the parties desire to enter into this Agreement to set forth their duties and obligations for such contributions, and the impact fee credits and/or reimbursement to which the Developer will be entitled.

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is acknowledged by both parties and the mutual terms, covenants and conditions to be complied with on the part of the parties hereto, the parties do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. **IMPACT FEE CREDIT AND REIMBURSEMENT**

A. **Dedication of Right Of Way.**

(1). *Property Owned by the Developer.* Developer agrees to convey to the applicable governmental entity with jurisdiction, the right-of-way currently (i.e., as of the date of this Agreement) owned by the Developer and required for the Intersection Improvement, as that term is defined in the Proportionate Share Agreement, and for the widening of County Road 48, as more specifically described within the Proportionate Share Agreement, without impact fee credit.

(2). *Additional Right of Way to be Acquired.* To the extent that additional right-of-way is required for construction of the Intersection Improvement beyond that which is currently (i.e., as of the date of this Agreement) owned by Developer, the County shall be responsible for acquiring such right-of-way, without regard to whether such right-of-way will be ultimately owned by the County or FDOT. The Developer shall have no obligations hereunder until all right-of-way necessary for the Intersection Improvement has been acquired.

B. **Reimbursement for the Intersection Improvement.**

(1). *Amount of Reimbursement.* The County agrees that the Developer shall be entitled to reimbursement in the form of impact fee credits and/or cash as set forth herein based upon the actual cost of designing, permitting and constructing the Intersection Improvement and any related costs, including, but not limited to, utilities relocation, purchase and installation of traffic signals, construction management and inspection, surveying, soils and material testing, and soil remediation costs; however, in no event shall the Developer be entitled to any credit and/or reimbursement in excess of 120% of the estimated costs set forth in *Exhibit "A,"* unless and to the extent the Project is competitively bid, in which case the Developer shall be entitled to impact fee credit and/or reimbursement in the amount of the actual cost of constructing the Project. The parties agree that Exhibit "A" excludes costs to acquire additional right-of-way, relocate utilities, remediate contaminated soils, and other unknown costs that may be necessary to complete construction of the Intersection Improvement, and that Developer shall be reimbursed based on the actual value of such costs incurred by Developer, if any, regardless of Exhibit "A." It is further agreed that Developer shall not be entitled to reimbursement/credit in

excess of the amount of road impact fees to be generated over the life of the DRI; provided, however, in the event there is a decrease, termination or moratorium on road impact fee rates after the effective date of this Agreement, then Developer shall be entitled to cash reimbursement up to the amount of impact fees that would have been collected over the life of the DRI in the absence of such decrease, termination or moratorium.

(2). Method of Reimbursement. All transportation impact fees in the County's impact fee trust account shall be available for cash reimbursement to Developer in accordance with this Agreement. Except as otherwise provided in **Section 2.B.1** above, the Developer shall be reimbursed by the County based upon: (i) 100% of the value secured by the posting of a payment and performance bond, or irrevocable letter of credit ("ILOC"), by Developer or Developer's contractor, which bond or ILOC names the County and/or FDOT as an obligee, and guarantees the completion of the Intersection Improvement, plus 100% of the design, permitting and other costs subject to reimbursement as provided herein that are certified as completed by the Developer's engineer; or (ii) if no payment and performance bond or ILOC is required, then the percentage of the Intersection Improvement work completed by Developer or Developer's contractor by delivering to the County a certification by the Developer's engineer indicating the percentage of work completed through the date of certification, which reimbursement shall be available to the Developer upon inspection, approval and acceptance of such certification by the County (not to be unreasonably withheld, conditioned or delayed). The Developer shall have the option of being reimbursed in impact fee credits to the extent that insufficient cash is available to reimburse Developer in full at the time such application is made, or Developer may choose to be reimbursed in cash when it becomes available. The amount of reimbursement owing to Developer shall be based upon the value of the Intersection Improvement in accordance with the above. The Developer shall pay transportation impact fees pursuant to County ordinance except and to the extent that Developer is entitled to impact fee credits and Developer elects to utilize such credits. Impact fee credits made available to the Developer shall be assignable by Developer in accordance with this Agreement. The Developer shall keep records which concern or reflect the total cost of the Intersection Improvement. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection or copying, for a minimum of five (5) years from the termination of this Agreement.

C. Assignment of Impact Fee Credits by the Developer. Any impact fee credits granted to Developer shall be freely assignable by the Developer without limitation on the number of such credits may be assigned and transferred from one entity to the next. Any such assignment by Developer shall be evidenced in writing and signed by Developer.

D. Annual Review and Audit. The County shall conduct an annual review and audit of performance under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement and to report the credit applied toward payment of transportation impact fees and the balance of available and unused credit. If the Board finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, this Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Developer written notice with reasonable time in which to cure any alleged failure.

3. **Effective Date.** This Agreement shall not become effective until the later of: (i) the date that the Proportionate Share Agreement is executed in full by the County, the City, FDOT and the Developer; and (ii) the Development Order becomes effective, after all applicable appeals periods relating to the adoption of the Development Order have expired and all appeals filed during such period, if any, are resolved so that the DRI may be developed in a manner substantially consistent with the Development Order as it exists on the date of adoption by the City.

4. **Community Development District.** Any or all of Developer's funding and/or construction-related obligations set forth in this Agreement may be performed by a community development district created for the DRI pursuant to Chapter 190, Fla. Stat. In addition, and without limiting the foregoing, the Developer may perform any financial and/or construction-related obligation herein and be reimbursed by a community development district created for the DRI pursuant to Chapter 190, Fla. Stat. To the extent that any such contribution or construction-related activity is paid for by or (in the case of advancing impact fee credits) is secured by a community development district, then impact fee credits and/or reimbursement, as applicable, shall be granted in the name of such community development district and shall be subject to the same terms and conditions set forth herein as if they were granted to Developer.

5. **Notices.** Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the parties as follows:

COUNTY:

Sumter County Administrator
7375 Powell Road
Wildwood, FL 34785

DEVELOPER:

Wildwood Springs, LLC
Attn: Dean Barberree
5850 T.G. Lee Boulevard, Suite 200
Orlando, FL 32822

Copy to:

George Angeliadis, Esq.
The Hogan Law Firm
Post Office Box 485
Brooksville, Florida 34605

Copy to:

Chris Roper, Esq.
Akerman Senterfitt
Post Office Box 231
Orlando, Florida 32802

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of addresses is effective only upon receipt.

6. **Concurrency and Related Fees.** In the event that the County adopts a transportation concurrency fee or "mobility fee," or equivalent, in lieu of, or in addition to, transportation impact fees, Developer shall be vested from application of such fee or, in the alternative, entitled to receive credits against, and reimbursement from, such mobility fees or similar charges to the same extent as it is entitled to such credits against, and reimbursement from, impact fees.

7. **Successors.** This Agreement shall bind and inure to the benefit of the parties and their successors in interest. No prior or present agreements or representations shall be binding unless included in this Agreement. No subsequent agreement shall be valid or binding upon the parties unless in writing and executed by the party immediately bound by it. In any litigation arising out of this Agreement, each party shall be responsible for its attorney's fees and costs.

8. **Force Majeure.** In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Acts of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, then such party shall not be liable for damages to the other party as a result of such non-performance. Notwithstanding the above, both parties agree to take no action that would prevent the intended operation of this Agreement.

9. **Amendment.** This Agreement may be amended by mutual written agreement of the parties where such amendment is duly executed with the same formalities as this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year above first written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA**

Gloria Hayward, Clerk of the Court

Don Burgess, Chairman

Approved as to Form
and Legal Sufficiency

Sumter County Attorney

WILDWOOD SPRINGS, LLC, a Florida
limited liability company

By: CROSLAND WILDWOOD
SPRINGS, LLC, a North Carolina limited
liability company, as its Operating Manager

By: CROSLAND WILDWOOD SPRINGS
INVESTORS, LLC, a North Carolina
limited liability company as its Manager

By: CROSLAND MANAGER, LLC, a
North Carolina limited liability company, as
its Manager

ATTEST:

By: _____

By: _____

Name: _____

As Its: _____

Date: _____

Exhibit "A"

US 301 AT CR 468; SUMTER COUNTY CONSTRUCTION, DESIGN, AND CEI COST ESTIMATE

CONCEPTUAL DESIGN:
CONSTRUCTION OF RE-ALIGNED CR 468 AT US 301 AND RESURFACING AND WIDENING OF US 301 NORTH AND
SOUTH OF THE RELOCATED INTERSECTION

<u>LRE Component</u>	<u>Sequence 1</u>	<u>Sequence 2</u>	<u>Total Cost</u>
	US 301: WIDEN AND RESURFACE	CR 468: RE-ALIGNED 4-LANE DIVIDED URBAN ROADWAY	
Earthwork			
Embankment	\$43,437.84	\$408,104.85	
Clearing and Grubbing	<u>\$22,329.04</u>	<u>\$22,696.30</u>	
Total Earthwork	\$65,766.88	\$430,801.15	\$496,568
Roadway	\$293,440.68	\$384,268.85	\$677,710
Shoulder	\$46,463.40	\$96,224.74	\$142,688
Median	N/A	\$39,567.77	\$39,568
Drainage			
Standard Drainage	\$29,338.10	\$234,744.55	
Retention Basin	<u>N/A</u>	<u>\$182,909.03</u>	
Total Drainage	\$29,338.10	\$417,653.58	\$446,992
Signing	\$11,595.88	\$10,811.95	\$22,408
Signalization	N/A	\$131,313.81	\$131,314
Lighting	\$34,000.00	\$33,932.95	\$67,933
Subtotal	\$480,604.94	\$1,544,574.80	\$2,025,180
Initial Contingency			\$50,000
Maintenance of Traffic (10%)			\$207,518
Mobilization (10%)			\$228,270
Project Unknowns (20%)			\$502,194
Construction Cost Total			\$3,013,162
Design (15%)			\$451,974
CEI (15%)			\$451,974
Total Project Cost			\$3,917,110

12/18/2008

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